In the Supreme Court of the United States

OCTOBER TERM, 1967

No. 605

MARTIN G. HOBAN, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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1. Decisions affecting employment in the federal civil service have traditionally been viewed primarily as matters for executive judgment, with judicial review confined to the question whether the employee's procedural rights were fully safeguarded. The present record reveals compliance with procedural requirements at all stages of the case, and petitioner does not argue otherwise.

2. Instead, petitioner seeks to raise the claim that he was discharged because of chronic alcoholism and

that this is an impermissible ground because "alcoholics are sick people and must be treated as such" (Pet. 4). As the Court of Claims correctly noted, however, "there is no issue in this case of whether plaintiff was a chronic alcoholic" (Pet. App. A-1). Petitioner never raised that issue at the administrative level, where his removal was sustained. Accordingly, the court below properly refused to consider it. *Moog Industries, Inc.* v. *Federal Trade Commission*, 355 U.S. 411. The record clearly establishes that petitioner was charged with "excessive unauthorized absence." His case was heard on that charge and his employment was terminated because the evidence before the Civil Service Commission amply sustained it.

We respectfully submit that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

OCTOBER, 1967

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